the circumstances of the particular case, a question not reducible to exact precedent.

A. M. K.

PUBLIC LANDS: SWAMP AND OVERFLOWED LANDS: TITLE BY LISTING IN CALIFORNIA.—The plaintiff in *Sawyer v. Osterhaus*,[1] who failed to sustain his title to swamp lands by relying on the act of 1850 and parol evidence to prove its character, may have overlooked a method of acquiring title that is unique to California.

By the act of 1850 or the Arkansas Act[2] as it is called, Congress gave the states on compliance with certain requirements, all the swamp lands within their borders. The many cases[3] holding this act vested title in the states immediately, have been overruled. The ground of these later decisions[4] is that the fee remains in the federal government until a patent is issued to the state or individual. There is one exception to this universal rule. To understand this, it is necessary to go back to early California days.

On the acquisition of the present territory of California the proprietary title as well as the fee in all the public lands within its limits passed at once to the United States. Thus the federal government obtained title to some two million acres of swamp land. The early reclamation of these lands was essential, not only on account of their extraordinary fertility when reclaimed, but also for the reason that they were the cause of malarial fevers and disease. So Congress passed the law of 1850, which proved woefully inadequate. The chief cause of complaint was the delay of the interior department in making out and certifying the lists required, before patents could be issued. Great inconvenience was caused in this state as the heavy immigration of 1850 and the years following caused a large demand for lands of this character.

In an effort to remedy this, the legislatures of several states in which swamp lands existed, including California,[5] attempted to identify and dispose of the lands, passing acts for their survey and sale and the issuance of patents therefor. Conflicts immediately arose between the parties claiming under the state and those claiming directly from the United States. This finally led to the

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[1] (February 7, 1914), 212 Fed. 765.

[2] 9 Stat. at L. 520, ch. 84; 1901 U. S. Comp. St. 1586.

[3] Summers v. Dickinson (1858), 9 Cal. 554; Owens v. Jackson (1858), 9 Cal 322; Kernan v. Griffith (1864), 27 Cal. 87; 9 Opinions Attys. Gen. 254; Lux v. Haggin (1886), 69 Cal. 255, at 340, 10 Pac. 674; People ex rel Pierce v. Morrill (1864), 26 Cal. 336.

[4] Rogers' Locomotive Works v. Emigrant Co. (1896), 164 U. S. 559, 41 L. Ed. 552, 17 Sup. Ct. 188; Brown v. Hitchcock (1899), 173 U. S. 473, 43 L. Ed. 772, 19 Sup. Ct 485; McCormick v. Hayes (1895), U. S. 332, 40 L. Ed. 171, 16 Sup. Ct. 37; Chapman & Dewey Lumber Co. v. St. Francis Levee District (1914), 232 U. S. 186, 34 Sup. Ct. Rep. 297.

[5] 1855 Stat. Cal. 189; 1863 Stat. Cal. 591.

passage by Congress of the act of 1866[6] entitled "An act to quiet land titles in California", by which the provisions of the act of 1850 were changed in their application to California. The identification of swamp lands was no longer left to the Secretary of the Interior, but to the joint action of the state and the federal authorities.

This mutual action results in the certification of title from the federal government to the state. From this time on the swamp land takes the character of other land within the state and is subject to its jurisdiction. Confirmation by patent from the United States is not necessary under the act of 1866, as listing and identification alone is sufficient.[7] The courts have come to the conclusion that the correct rule for the act of 1850 is, that the legal title passes only upon issuance of United States' patent, that when the lands are identified as swamp lands and not before, the state or its grantee is entitled to a patent therefor. On the issuance of this patent, what was previously an equitable title, becomes a perfect legal title in fee simple. Under the act of 1866, the title by state grant that vests would seem to be a legal rather than an equitable one. So had the plaintiff brought his case under the provisions of this act his lack of a federal patent ought not to have been material.

L. G.

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[6] 14 Stat. at L. 218, ch. 219.

[7] Wright v. Roseberry (1887), 121 U. S. 488, 30 L. Ed. 1039, 7 Sup. Ct. 985; Tubbs v. Wilhoit (1891), 138 U. S. 134, 34 L. Ed. 887, 11 Sup. Ct. 279; 2 Dec. Dept. Int. Public Lands 652.